

MONTANA LEGISLATIVE HISTORY

Chapter 393 19 93

Bill H 139 S _____ Original bill & history ☒ C

H. Committee on Local Government

Hearing Date(s) Jan 19 ☒ C

Jan 26 ☒ C

_____ ☐ C

_____ ☐ C

Date Out Jan 27 ☒ C

S. Committee on Business & Industry

Hearing Date(s) Mar 02 ☒ C

Mar 04 ☒ C

_____ ☐ C

_____ ☐ C

Mar 04 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

1/19 HEARING
1/28 TABLED IN COMMITTEE

HB 137 INTRODUCED BY SAYLES, ET AL.
REPEAL DISTRIBUTION OF FIRE CODE REQUIREMENT
BY REQUEST OF DEPARTMENT OF JUSTICE

1/11	INTRODUCED		
1/11	REFERRED TO LOCAL GOVERNMENT		
1/11	FIRST READING		
1/11	FISCAL NOTE REQUESTED		
1/15	FISCAL NOTE RECEIVED		
1/15	FISCAL NOTE PRINTED		
1/19	HEARING		
1/20	COMMITTEE REPORT—BILL PASSED		
1/22	2ND READING PASSED	95	1
1/25	3RD READING PASSED	97	0
	TRANSMITTED TO SENATE		
1/27	FIRST READING		
1/27	REFERRED TO STATE ADMINISTRATION		
2/08	HEARING		
2/11	COMMITTEE REPORT—BILL CONCURRED		
2/13	2ND READING CONCURRED	49	0
2/15	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
2/19	SIGNED BY SPEAKER		
2/19	SIGNED BY PRESIDENT		
2/22	TRANSMITTED TO GOVERNOR		
2/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 77		
	EFFECTIVE DATE: 10/01/93		

HB 138 INTRODUCED BY DRISCOLL, ET AL.
EXPAND FIREFIGHTER WORKERS' COMPENSATION FOR
CARDIOVASCULAR, PULMONARY OR RESPIRATORY DISEASE

1/11	INTRODUCED		
1/11	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/11	FIRST READING		
1/14	HEARING		
1/26	COMMITTEE REPORT—BILL NOT PASSED		
1/28	ADVERSE COMMITTEE REPORT ADOPTED	50	48

HB 139 INTRODUCED BY GRINDE
EXEMPT REGISTERED LAND SURVEYOR FROM SEEKING UNDERGROUND
UTILITY INFORMATION

1/11	INTRODUCED		
1/11	REFERRED TO LOCAL GOVERNMENT		
1/11	FIRST READING		
1/19	HEARING		
1/27	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/29	2ND READING PASSED	95	2
2/01	3RD READING PASSED	97	1
	TRANSMITTED TO SENATE		
2/03	FIRST READING		
2/03	REFERRED TO BUSINESS & INDUSTRY		
3/02	HEARING		
3/06	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		

3/08	2ND READING CONCURRED	40	3
3/09	3RD READING CONCURRED	43	5
	RETURNED TO HOUSE WITH AMENDMENTS		
3/31	2ND READING AMENDMENTS CONCURRED	94	1
4/02	3RD READING AMENDMENTS CONCURRED	89	10
4/07	SIGNED BY SPEAKER		
4/13	SIGNED BY PRESIDENT		
4/14	TRANSMITTED TO GOVERNOR		
4/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 393		
	EFFECTIVE DATE: 10/01/93		

HB 140 INTRODUCED BY VOGEL

INCREASE PENALTY FOR VIOLATING FUEL CONSERVATION SPEED LIMIT;
ALLOCATE FINE

1/11	INTRODUCED		
1/11	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/11	FIRST READING		
1/11	FISCAL NOTE REQUESTED		
1/16	FISCAL NOTE RECEIVED		
1/18	FISCAL NOTE PRINTED		
1/18	HEARING		
1/25	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/28	REVISED FISCAL NOTE REQUESTED		
2/03	REVISED FISCAL NOTE RECEIVED		
2/03	REVISED FISCAL NOTE PRINTED		
2/06	2ND READING DO NOT PASS AS AMENDED	65	31

HB 141 INTRODUCED BY SPRING, ET AL.

ALLOW NONVOTING HIGH SCHOOL TRUSTEE POSITION TO BECOME
VOTING POSITION

1/12	INTRODUCED		
1/12	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/12	FIRST READING		
1/18	HEARING		
1/20	COMMITTEE REPORT—BILL PASSED		
1/22	2ND READING PASSED	97	1
1/25	3RD READING PASSED	96	1
	TRANSMITTED TO SENATE		
1/27	FIRST READING		
1/27	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/01	HEARING		
2/12	TABLED IN COMMITTEE		

HB 142 INTRODUCED BY ANDERSON

INCREASE TO \$750 THE AMOUNT REQUIRED TO BE INVOLVED IN VARIOUS
CRIMES BEFORE PENALTIES FOR THOSE CRIMES ARE INCREASED

1/12	INTRODUCED		
1/12	REFERRED TO JUDICIARY		
1/12	FIRST READING		
1/19	HEARING		
1/26	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/29	2ND READING PASSED AS AMENDED	51	48
1/29	SEGREGATED FROM COMMITTEE OF THE WHOLE REPORT AND PLACED ON 2ND READING		
1/30	2ND READING PASSED AS AMENDED	95	3
2/03	3RD READING PASSED	79	14

HOUSE BILL NO. 139
INTRODUCED BY GRINDE

IN THE HOUSE

JANUARY 11, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LOCAL GOVERNMENT.
	FIRST READING.
JANUARY 27, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 28, 1993	PRINTING REPORT.
JANUARY 29, 1993	SECOND READING, DO PASS.
JANUARY 30, 1993	ENGROSSING REPORT.
FEBRUARY 1, 1993	THIRD READING, PASSED. AYES, 97; NOES, 1.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 3, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
MARCH 6, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 8, 1993	SECOND READING, CONCURRED IN.
MARCH 9, 1993	THIRD READING, CONCURRED IN. AYES, 43; NOES, 5.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 31, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 2, 1993	THIRD READING, AMENDMENTS CONCURRED IN.

4

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 139
2 INTRODUCED BY Larry Han Gannon
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING LAND
5 SURVEYORS WHO ARE HAND DIGGING FOR CERTAIN PURPOSES FROM THE
6 PROVISION REQUIRING EXCAVATORS TO OBTAIN INFORMATION ON THE
7 LOCATION OF UTILITIES; AND AMENDING SECTION 69-4-502, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **Section 1.** Section 69-4-502, MCA, is amended to read:

11 "69-4-502. Information to be sought before excavation
12 -- notification -- ~~exception~~ exceptions. (1) (a) No Except
13 as provided in subsection (1)(b), a person shall may not
14 make or begin any excavation in any a public street, alley,
15 right-of-way dedicated to the public use, or utility
16 easement without first obtaining information concerning the
17 possible location of any underground facility from each and
18 every public utility, municipal corporation, or other person
19 having the right to bury such underground facilities within
20 the public street, alley, right-of-way, or utility easement.

21 (b) A registered land surveyor or a person under the
22 supervision of a registered land surveyor may hand dig for
23 shallow survey monuments at a depth of 12 inches or less
24 below the road surface of a highway or at the intersection
25 of the center lines of public streets. The registered land

1 surveyor, prior to hand digging, shall give proper
2 notification to the appropriate governing authority
3 regarding safety and pavement repair and, when appropriate,
4 shall reference the monument upon exposure. The registered
5 land surveyor is liable for damages incurred regarding
6 utility destruction.

7 (2) Every public utility, municipal corporation, or
8 other person having the right to bury underground facilities
9 shall file with the county clerk and recorder in each county
10 where the underground facilities are located, the name,
11 address, and telephone number of the person or persons from
12 whom the necessary information may be obtained unless a
13 one-call notification center is available.

14 (3) (a) A public utility, municipal corporation,
15 underground facility owner, or person having the right to
16 bury underground facilities must be a member of a one-call
17 notification center covering the service area in which the
18 entity or person has underground facilities.

19 (b) Subsection (3)(a) does not apply to an owner or
20 occupant of real property where underground facilities are
21 buried if the facilities are used solely to furnish services
22 or commodities to that property and no part of the
23 facilities are located in a public street, alley, or
24 right-of-way dedicated to the public use."

-End-

-2-

HB 139
INTRODUCED BILL

CHAIRMAN--NORM WALLIN
 SECRETARY--PAT BENNETT
 NORMAL SCHEDULE => SITE: ROOM 104

COMMITTEE--HOUSE LOCAL GOVERNMENT

DAYS: TU,TH

TIME: 3:00 P.M.

- BILL NO-- REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ----- REREFERRED ---- DATE READ

HB0014	TOOLE, HOWARD		LONGEVITY PAY FOR SHERIFF DEPARTMENT EMPLOYEES			
	12/30	1/05		TABLED ON 01/05	VOTE: 14-0	
HB0039	EWER, DAVID		CLARIFY ELECTION REQUIREMENT FOR MUNICIPAL WATER AND SEWER BONDS			
	12/30	1/12		PASS AS AMENDED 01/14	VOTE: 14-0	1/15
HB0044	EWER, DAVID		INVESTMENT OF MAINTENANCE DISTRICT FUNDS			
	12/30	1/05		DO PASS 01/12	VOTE: 15-0	1/13
HB0062	KELLER, VERNON		APPOINTMENT OF UNEVEN NUMBER OF DIRECTORS ON WATER & SEWER DISTRICT BOARD			
	12/30	1/12		TABLED ON 01/12	VOTE: 14-1	
HB0063	KELLER, VERNON		ELIMINATE COUNTY RAFFLE PERMIT FOR RELIGIOUS GROUPS AND NONPROFIT AGENCIES			
	12/30	1/07		PASS AS AMENDED 01/12	VOTE: 14-1	1/13
HB0087	FAGG, RUSSELL		REVISE LIEN ARISING FROM LOAN FROM REVOLVING FUND OF RURAL SID			
	12/30	1/05		TABLED ON 01/05	VOTE: 14-0	
HB0088	MCCAFFREE, ED		REMOVING MINIMUM BID REQUIREMENT AT SHERIFFS' SALES/DISTRIBUTION OF PROCEEDS			
	12/30	1/12		PASS AS AMENDED 01/12	VOTE: 14-1	1/13
HB0109	BARNETT, JOE		COUNTY COMMISSION DISCRETION IN ROAD DEVELOPMENT			
	1/06	1/14		DO PASS 01/14	VOTE: 12-2	1/15
HB0132	WYATT, DIANA		EXEMPT SALE OF MUNICIPAL PROPERTY ACQUIRED BY TAX DEED FROM VOTER APPROVAL			
	1/09	1/19		DO PASS 01/19	VOTE: 14-0	1/20
HB0137	SAYLES, TIM		REPEAL DISTRIBUTION OF FIRE CODE REQUIREMENT			
	1/11	1/19		DO PASS 01/19	VOTE: 14-0	1/20
HB0139	GRINDE, LARRY HAL		EXEMPT REGISTERED LAND SURVEYOR FROM SEEKING UNDERGROUND UTILITY INFORMATION			
	1/11	1/19		PASS AS AMENDED 01/26	VOTE: 15-1	1/27

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By CHAIRMAN NORM WALLIN, on January 19, 1993, at
3:00 p.m.

ROLL CALL

Members Present:

Rep. Norm Wallin, Chairman (R)
Rep. Ellen Bergman (R)
Rep. John Bohlinger (R)
Rep. Tim Dowell (D)
Rep. Dave Ewer (D)
Rep. Stella Jean Hansen (D)
Rep. Jack Herron (R)
Rep. Ed McCaffree (D)
Rep. Sheila Rice (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Randy Vogel (R)
Rep. Karyl Winslow (R)
Rep. Diane Wyatt (D)

Members Excused: Rep. Ray Brandewie, Vice Chairman (R)
Rep. Dave Brown (D)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Council
Pat Bennett, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 139; HB 137; HB 132
Executive Action: HB 132; HB 137

HEARING ON HOUSE BILL 139

Opening Statement by Sponsor:

REP. LARRY GRINDE, HD 30, Lewistown, introducing HB 139 on behalf of the Montana Surveyors, stated that the statute under Section 61-4-502 was enacted to protect those who were digging utility lines and phone lines with backhoes, etc., from injury or death. This law does not address surveyors. HB 139 would exempt surveyors from this statute. The surveyors would be hand digging no further than 12 inches into the ground. Prior notification to

the appropriate authority would be required. The registered land surveyor would be liable for damages incurred under any utility construction. The utility companies, U.S. West and Montana Power, have indicated their cables and wires are well below the 12 inches, therefore, they did not see any problem. REP. GRINDE distributed a proposed amendment. EXHIBIT 1 He informed the Committee that an amendment would also need to be drafted to protect the line owner from liability.

Proponents' Testimony:

Tom Sands, President, Montana Association of Land Surveyors, said this change in law is necessary because under current law when a surveyor goes out to dig up existing monuments they are required to get approval from the utility companies. This requirement causes a delay in the job and creates problems.

Gary Willis, Montana Power Company (MPC), said MPC supported the bill and stated he would have an amendment drafted to address the liability issue.

Dan Walker, representing U S West, testified in favor of HB 139 as written and with the proposed amendments. He stated that U S West believes the changes are reasonable.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. MCCAFFREE asked REP. GRINDE if the local governing body would be assuming any liability through the suggested amendment. REP. GRINDE replied that if the governing body gives approval it could be opening itself up to liability. He said neither he nor the surveyors would be opposed to drafting an amendment to also eliminate any liability with the governing body.

Mr. Campbell clarified whether the committee wished to provide an amendment preventing the governing body from being liable and not be required to give approval.

REP. GRINDE said he would want the governing body required to give approval, but on the other hand, would not want the governing body to be held liable.

REP. EWER asked if the committee was comfortable with the term "registered land surveyor."

Mr. Sands said there is only one definition for a "registered land surveyor" and it has been referenced.

REP. VOGEL asked Mr. Sands if he stated that he was willing to accept more liability.

Mr. Sands said Montana Power Company had a proposed amendment

which would put more liability on the surveyor. This would cover liability in the event the surveyor was injured and would prevent the surveyor's spouse from suing the power company. Mr. Sands stated that under current law he already assumes responsibility.

REP. MCCAFFREE informed the committee that the above-mentioned amendment only addresses the company's liability and he would like to address the local government's liability.

REP. HANSON asked Mr. Sands to describe the extent of his surveying.

Mr. Sands explained that a surveyor digs for monuments which are usually at intersections. Sometimes these monuments are buried due to construction requiring the surveyor to dig three or four inches at the most.

Closing by Sponsor:

REP. GRINDE said he would arrange with Mr. Campbell to have the amendments drafted.

HEARING ON HOUSE BILL 137

Opening Statement by Sponsor:

REP. TIM SAYLES, HD 61, Missoula, said HB 137 would repeal Section 2-15-2011. The Department of Justice (DOJ) publishes a fire code manual which is estimated to cost approximately \$3,000 biannually. The DOJ believes it can relay this information through the computer or if necessary, through a hard copy.

Proponents' Testimony:

Bruce Suenram, Chief of Fire Prevention Investigation Bureau, Department of Justice, (DOJ), explained that DOJ was responsible for publishing the fire codes of Montana. The Fire Codes of Montana manuals are excerpts from the Montana Code Annotated (MCA). Referring to his previous experience as a fire chief, Mr. Suenram stated his fire department purchased the entire set of MCA. The information needed usually could not be found in the Fire Codes of Montana. EXHIBIT 2

Vern Ericksen, representing the Montana State Firemen's Association, as well as a member of the State Fire Marshall's Advisory Board, informed the committee of a discussion at a recent board meeting in which the board concurred with HB 137. Larry McCann, Fire Marshall, Billings, also a Board member, indicated that the manual created confusion.

Alec Hansen, Montana League of Cities and Towns, stated the League would have no problems with the bill as long as small towns will still have access to the codes. In an effort to keep

HOUSE OF REPRESENTATIVES

LOCAL GOVERNMENT

COMMITTEE

ROLL CALL

DATE

1-19-93

NAME	PRESENT	ABSENT	EXCUSED
REP. NORM WALLIN, CHAIRMAN	✓		
REP. RAY BRANDEWIE, VICE CHAIRMAN			✓
REP. ELLEN BERGMAN	✓		
REP. JOHN BOHLINGER	✓		
REP. DAVE BROWN			✓
REP. TIM DOWELL	✓		
REP. DAVID EWER	✓		
REP. STELLA JEAN HANSEN	✓		
REP. JACK HERRON	✓		
REP. ED McCAFFREE	✓		
REP. SHEILA RICE	✓		
REP. TIM SAYLES	✓		
REP. LIZ SMITH	✓		
REP. RANDY VOGEL	✓		
REP. KARYL WINSLOW	✓		
REP. DIANA WYATT	✓		

EXHIBIT

DATE

1/19/93

Proposed Amendment to House Bill No. 139

X

HB 139

Written for: Representative Grinde

Section 1, (b) shall be amended to read:

(b) A registered land surveyor or a person under the supervision of a registered land surveyor may hand dig for shallow survey monuments at a depth of 12 inches or less below the road surface of a highway or at the intersection of the center lines of public streets. The registered land surveyor, prior to hand digging, shall obtain proper approval from the appropriate governing authority regarding safety and pavement repair and, when appropriate, shall reference the monument upon exposure. The appropriate governing authority shall provide guidance and approval as soon as possible, but not to exceed 2 working days. The registered land surveyor is liable for damages incurred regarding utility destruction.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN NORM WALLIN**, on January 26, 1993, at
3:00 p.m.

ROLL CALL

Members Present:

Rep. Norm Wallin, Chairman (R)
Rep. Ray Brandewie, Vice Chairman (R)
Rep. Ellen Bergman (R)
Rep. John Bohlinger (R)
Rep. Dave Brown (D)
Rep. Tim Dowell (D)
Rep. Dave Ewer (D)
Rep. Stella Jean Hansen (D)
Rep. Jack Herron (R)
Rep. Ed McCaffree (D)
Rep. Sheila Rice (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Randy Vogel (R)
Rep. Karyl Winslow (R)
Rep. Diane Wyatt (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Council
Pat Bennett, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 203, HB 156, HB 169, SB 8
Executive Action: HB 139, HB 203, HB 169

HEARING ON HOUSE BILL 203

Opening Statement by Sponsor:

REP. DON LARSON, HD 65, Seeley Lake, said HB 203 simply adds
fire service areas to the list of entities that can enter into
mutual aid agreements. Fire service areas were inadvertently
omitted.

EXECUTIVE ACTION ON HOUSE BILL 139

Motion: REP. RICE MOVED THAT HB 139 DO PASS.

Motion/Vote: REP. RICE moved to adopt the amendment for HB 139. EXHIBIT 4 Motion carried 15-1 with REP. HANSON opposing.

Motion/Vote: REP. BOHLINGER MOVED THAT HB 139 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 203

Motion/Vote: REP. BRANDEWIE MOVED THAT HB 203 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 169

Motion: REP. DOWELL moved to amend HB 169 on page 1, line 19, between "the" and "repair" insert "emergency."

Discussion: REP. DOWELL stated that the amendment will justify the \$45,000 limit for repair to deal with emergencies as they arise.

Mr. Campbell said that the bill would have allowed certain types of repair and maintenance under \$10,000 not to be put out for bid. If the word "emergency" is inserted counties would be required to put in for a bid regardless of the amount and suggested that the Committee include a clause which stating "in excess of" whatever amount it feels necessary, or in the case of an emergency \$45,000.

REP. DOWELL said that was his intent.

REP. BROWN said that REP. WYATT had called Great Falls and was informed that one city block of paving costs \$45,000 and the city cannot get contractors to bid on it. As a result the city must wait until they have three or four blocks needing repair/paving in order to put out the bid and get an interest from the contractors. In the meantime, streets remain in disrepair. REP. BROWN suggested that the Committee leave the bill as it is.

REP. SAYLES asked the Committee to postpone executive action until more information was obtained.

Vote: REP. DOWELL withdrew his motion. CHAIRMAN WALLIN advised that executive action on HB 169 would take place Thursday, January 28, 1993.

HOUSE OF REPRESENTATIVES

LOCAL GOVERNMENT

COMMITTEE

ROLL CALL

DATE

1-26-93

NAME	PRESENT	ABSENT	EXCUSED
REP. NORM WALLIN, CHAIRMAN	✓		
REP. RAY BRANDEWIE, VICE CHAIRMAN	✓		
REP. ELLEN BERGMAN	✓		
REP. JOHN BOHLINGER	✓		
REP. DAVE BROWN	✓		
REP. TIM DOWELL	✓		
REP. DAVID EWER	✓		
REP. STELLA JEAN HANSEN	✓		
REP. JACK HERRON	✓		
REP. ED McCAFFREE	✓		
REP. SHEILA RICE	✓		
REP. TIM SAYLES	✓		
REP. LIZ SMITH	✓		
REP. RANDY VOGEL	✓		
REP. KARYL WINSLOW	✓		
REP. DIANA WYATT	✓		

DATE 1-26-93
HB 139

Amendments to House Bill No. 139
First Reading Copy

Requested by Representative Grinde
For the Committee on Local Government

Prepared by Bart Campbell
January 25, 1993

1. Title, line 7.
Following: "UTILITIES;"
Insert: "DETERMINING LIABILITY FOR DAMAGES INCURRED OR SUFFERED
BY LAND SURVEYORS;"
2. Page 2, line 1.
Strike: "give"
Insert: "obtain"
3. Page 2, line 2.
Strike: "notification to"
Insert: "approval from"
4. Page 2, line 4.
Following: "exposure."
Insert: "The governing authority is not liable for any damages
caused or suffered by the registered land surveyor or any
person under the supervision of the registered land
surveyor."
5. Page 2, line 6.
Following: "destruction"
Insert: ", and any public utility, municipal corporation, or
other person having the right to bury underground facilities
within the public street, alley, right-of-way, or utility
easement is not liable for any damages suffered by the
registered land surveyor or any person under the control of
the registered land surveyor"

HOUSE STANDING COMMITTEE REPORT

January 27, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Local Government report that House Bill 139 (first reading copy -- white) do pass as amended

Signed: _____
Norm Wallin, Chair

And, that such amendments read:

1. Title, line 7.

Following: "UTILITIES;"

Insert: "DETERMINING LIABILITY FOR DAMAGES INCURRED OR SUFFERED
BY LAND SURVEYORS;"

2. Page 2, line 1.

Strike: "give"

Insert: "obtain"

3. Page 2, line 2.

Strike: "notification to"

Insert: "approval from"

4. Page 2, line 4.

Following: "exposure."

Insert: "The governing authority is not liable for any damages
caused or suffered by the registered land surveyor or any
person under the supervision of the registered land
surveyor."

5. Page 2, line 6.

Following: "destruction"

Insert: ", and any public utility, municipal corporation, or
other person having the right to bury underground facilities
within the public street, alley, right-of-way, or utility
easement is not liable for any damages suffered by the
registered land surveyor or any person under the control of
the registered land surveyor"

CHAIRMAN--J.D. LYNCH

NORMAL SCHEDULE==> SITE: ROOM 410

DAYS: M,T,W,T,F

TIME: 10:00 A.M.

SECRETARY-KRISTIE WOLTER

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0139	2/03	3/02		CONCUR AS AMENDED		3/06
GRINDE, LARRY HAL			EXEMPT REGISTERED LAND SURVEYOR FROM SEEKING UNDERGROUND UTILITY INFORMATION			
HB0147	1/27	2/04		CONCUR		2/06
ELLIS, JR., ALVIN			AMEND CHIROPRACTIC ASSESSMENT LATE CHARGE FEE			
HB0161	1/30	2/10		CONCUR		2/11
MASON, GARY			REVISE REAL ESTATE APPRAISER LICENSING LAW; RENEWAL & CONTINUING EDUCATION			
HB0162	1/27	2/03		CONCUR		2/09
GERVAIS, FLOYD			REVISE MONTANA-WESTERN CANADIAN BOUNDARY COMMITTEE			
HB0165	1/28	2/05		CONCUR		2/09
LARSON, DON			IDENTIFICATION OF AND UNLAWFUL ACTS REGARDING LIQUEFIED PETROLEUM CONTAINERS			
HB0178	1/30	2/10		CONCUR		2/11
MASON, GARY			REVISE PRIVILEGED COMMUNICATION LAW WITH RESPECT TO ACCOUNTANTS			
HB0182	1/28	2/05		CONCUR		2/09
BACHINI, BOB			GENERAL REVISION OF CENTRAL CREDIT UNION LAWS			
HB0201	2/11	3/04		CONCUR		3/10
HIBBARD, CHASE			GENERALLY REVISE BANKING LAWS			
HB0222	2/16	3/03		CONCUR AS AMENDED		3/19
STANFORD, WAYNE			REVISE LICENSURE OF FIRE PROTECTION INSTALLERS AND SERVICERS			
HB0237	2/22	3/23		CONCUR		3/24
GRADY, ED			REVISE LICENSURE OF PUBLIC SWIMMING POOLS			
HB0245	2/22				JUDICIARY	
KADAS, MIKE			ESTABLISH GROUNDS FOR TERMINATION OF MOBILE HOME TENANCY			

1 HOUSE BILL NO. 139

2 INTRODUCED BY GRINDE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING LAND
5 SURVEYORS WHO ARE HAND DIGGING FOR CERTAIN PURPOSES FROM THE
6 PROVISION REQUIRING EXCAVATORS TO OBTAIN INFORMATION ON THE
7 LOCATION OF UTILITIES; DETERMINING LIABILITY FOR DAMAGES
8 INCURRED OR SUFFERED BY LAND SURVEYORS; AND AMENDING SECTION
9 69-4-502, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 69-4-502, MCA, is amended to read:

13 "69-4-502. Information to be sought before excavation
14 -- notification -- ~~exception exceptions~~. (1) (a) No Except
15 as provided in subsection (1)(b), a person shall may not
16 make or begin any excavation in any a public street, alley,
17 right-of-way dedicated to the public use, or utility
18 easement without first obtaining information concerning the
19 possible location of any underground facility from each and
20 every public utility, municipal corporation, or other person
21 having the right to bury such underground facilities within
22 the public street, alley, right-of-way, or utility easement.

23 (b) A registered land surveyor or a person under the
24 supervision of a registered land surveyor may hand dig for
25 shallow survey monuments at a depth of 12 inches or less

1 below the road surface of a highway or at the intersection
2 of the center lines of public streets. The registered land
3 surveyor, prior to hand digging, shall give OBTAIN proper
4 notification-to APPROVAL FROM the appropriate governing
5 authority regarding safety and pavement repair and, when
6 appropriate, shall reference the monument upon exposure. THE
7 GOVERNING AUTHORITY IS NOT LIABLE FOR ANY DAMAGES CAUSED OR
8 SUFFERED BY THE REGISTERED LAND SURVEYOR OR ANY PERSON UNDER
9 THE SUPERVISION OF THE REGISTERED LAND SURVEYOR. The
10 registered land surveyor is liable for damages incurred
11 regarding utility destruction, AND ANY PUBLIC UTILITY,
12 MUNICIPAL CORPORATION, OR OTHER PERSON HAVING THE RIGHT TO
13 BURY UNDERGROUND FACILITIES WITHIN THE PUBLIC STREET, ALLEY,
14 RIGHT-OF-WAY, OR UTILITY EASEMENT IS NOT LIABLE FOR ANY
15 DAMAGES SUFFERED BY THE REGISTERED LAND SURVEYOR OR ANY
16 PERSON UNDER THE CONTROL OF THE REGISTERED LAND SURVEYOR.

17 (2) Every public utility, municipal corporation, or
18 other person having the right to bury underground facilities
19 shall file with the county clerk and recorder in each county
20 where the underground facilities are located, the name,
21 address, and telephone number of the person or persons from
22 whom the necessary information may be obtained unless a
23 one-call notification center is available.

24 (3) (a) A public utility, municipal corporation,
25 underground facility owner, or person having the right to

1 bury underground facilities must be a member of a one-call
2 notification center covering the service area in which the
3 entity or person has underground facilities.

4 (b) Subsection (3)(a) does not apply to an owner or
5 occupant of real property where underground facilities are
6 buried if the facilities are used solely to furnish services
7 or commodities to that property and no part of the
8 facilities are located in a public street, alley, or
9 right-of-way dedicated to the public use."

-End-

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By J.D. Lynch, Chair, on March 2, 1993, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. J.D. Lynch, Chair (D)
Sen. Chris Christiaens, Vice Chair (D)
Sen. Betty Bruski-Maus (D)
Sen. Delwyn Gage (R)
Sen. Ethel Harding (R)
Sen. Ed Kennedy (D)
Sen. Terry Klampe (D)
Sen. Francis Koehnke (D)
Sen. Kenneth Mesaros (R)
Sen. Doc Rea (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: Senator Hager, Senator Toews.

Staff Present: Bart Campbell, Legislative Council
Kristie Wolter, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 300, HB 292, HB 139
Executive Action: HB 292, HB 300

HEARING ON HB 300

Opening Statement by Sponsor:

Representative Emily Swanson, House District 79, stated HB 300 was a "housekeeping" bill. She stated HB 300 would extend the length of time for a person to apply for a refund of a telephone exchange access from two to five years. She stated the change was included on line 19 of HB 300.

Dan Walker, U.S. West, stated his support of HB 292.

Gary Willis, Montana Power Company (MPC), stated MPC's support of HB 292.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

Representative Larson stated he would ask Senator Klampe to carry HB 292 on the floor of the Senate if it were to pass Committee.

HEARING ON HB 139

Opening Statement by Sponsor:

Representative Larry Grinde, House District 30, stated HB 139 was brought to him by the surveyors of Montana. He stated MCA 69-450-2 called for the notification of underground utility digging. He stated the surveyors would like to be exempt from the law because they don't dig deep enough to hit utility lines. He stated HB 139 would save the surveyors time. Representative Grinde referred to page 1, line 24 and 25 and stated the surveyors were allowed only to "hand dig for shallow monuments and to no greater depth than 12 inches". He stated the original law was appropriate for underground digging, but the surveyors do not dig deep enough to make it hazardous. He stated the amendments on page 2, lines 3 and 4, were to attain approval through the proper office. He stated there was a liability section placed by the House which would exempt the governing authority and the utility companies.

Proponents' Testimony:

Bill Bucher, Montana Association of Registered Land Surveyors, read from prepared testimony in support of HB 139 (Exhibit #2).

Gary Willis, Montana Power Company (MPC), stated his support of HB 139. He stated the underground transformers are placed at the corner pins of the property. He stated MPC's concern would be if a surveyor were to come off of the corner pins they would like them to assume all risks.

Dan Walker, U.S. West, stated he supported HB 139.

Gene Phillips, PPL, stated his support of HB 139.

John Alke, Montana/Dakota Utilities, stated his support of HB 139.

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association, read from prepared testimony in opposition to HB 139 (Exhibit #3).

Questions From Committee Members and Responses:

Senator Harding asked Mr. Hill how he would change the title to make it proper. Mr. Hill stated the title refers to "determining liability for damages incurred or suffered by land surveyors", and HB 139 also covers damages caused by the surveyors. He stated the points he stated were an inconsistency in the title.

Senator Rea asked Representative Grinde what type of liability would be covered if the utility lines were buried 24 inches and the surveyors were only digging 12 inches. Representative Grinde stated the concern was if something were to happen, the liability issue had to be addressed. He stated the chances of liability were not high.

Senator Lynch asked Representative Grinde asked if the title needed to be changed. Representative Grinde stated he would leave the title change to the Committee.

Closing by Sponsor:

Representative Grinde closed on HB 139, stating the surveyors weren't doing excavation and should be exempt.

EXECUTIVE ACTION ON HB 292

Motion/Vote:

Senator Harding moved HB 292 be CONCURRED IN. The motion CARRIED UNANIMOUSLY. Senator Klampe was assigned to carry HB 292.

ROLL CALL

SENATE COMMITTEE Business & Industry DATE 3/2/92

NAME	PRESENT	ABSENT	EXCUSED
Senator Lynch	✓		
Senator Christaens	✓		
Senator Bruski-Maus	✓		
Senator Gage	✓		
Senator Hager		✓	
Senator Harding	✓		
Senator Kennedy	✓	att	
Senator Klampe	✓		
Senator Koehnke	✓		
Senator Mesaros	✓		
Senator Rea	✓		
Senator Toews		✓	
Senator Wilson	✓		

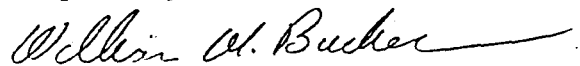
TESTIMONY IN SUPPORT OF HOUSE BILL NO. 139
PREPARED BY WILLIAM H. BUCHER, P.L.S., REPRESENTATIVE OF
THE MONTANA ASSOCIATION OF REGISTERED LAND SURVEYORS

The Montana Association of Registered Land Surveyors supports House Bill No. 139 which exempts land surveyors who are hand digging for certain purposes from the provision requiring excavators to obtain information on the location of utilities. The existing law requires all persons to obtain information on the location of underground utilities before excavation in public right-of-ways. We feel that this requirement is unduly restrictive to the practice of land surveying and unnecessary for the following reasons:

1. Land Surveyors are required to find existing survey monuments when performing a new survey. These monuments are often located at street intersections or at the edge of public right-of-ways and are often buried.
2. Land surveyors can not predict which street monuments will have to be sought before beginning the survey. Although it may be clear that certain monuments will be required from the beginning, often these monuments are missing and the surveyor must seek further to find adequate monumentation to perform the survey. If surveyors needed to have utilities located at all points that might eventually be used, we would have to have an extensive area marked for utilities or proceed step-by-step over a period of weeks on a survey that should take one day.
3. Utilities are normally buried at depths of 24 inches or greater. The proposed legislation would allow surveyors to excavate to 12 inches which should prevent disturbance of utilities. This is a sufficient depth to find most survey monuments.
4. The proposed legislation clearly states that the surveyor will be liable for damages to public utilities just as any other excavator would be if a utility were damaged. It will be the surveyor's decision to determine if he needs the additional protection of having utilities located before digging.

In closing, we feel that land surveyors need this modification to existing legislation to allow our work to proceed in an efficient, orderly, and legal manner.

Respectfully submitted;



William H. Bucher, P.L.S.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 3/2/93

BILL NO. HB 139

25

Montana Trial Lawyers ASSOCIATION

Directors:

Wade Dahood
Director Emeritus
Monte D. Beck
Thomas J. Beers
Michael D. Cok
Michael W. Cotter
Karl J. Englund
Robert S. Fain, Jr.
Victor R. Halverson, Jr.
Gene R. Jarussi
Peter M. Meloy
John M. Morrison
Gregory S. Munro
David R. Paoli
Paul M. Warren
Michael E. Wheat

Executive Office
#1 Last Chance Gulch
Helena, Montana 59601
Tel: 443-3124

March 2, 1993

Officers:

Thomas J. Beers
President
Monte D. Beck
President-Elect
Gregory S. Munro
Vice President
Michael E. Wheat
Secretary-Treasurer
William A. Rossbach
Governor
Paul M. Warren
Governor

Sen. J.D. Lynch, Chair
Senate Business and Industry Committee
Room 410, State Capitol
Helena, MT 59624

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3

DATE 3/2/93

BILL NO. HB 139

RE: HB 139

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to those portions of House Bill 139 which alter liability for damages caused by certain land surveyors. MTLA opposes those provisions for several reasons:

1. The first provision regarding liability (page 2, lines 6-9) completely immunizes governing authorities from any responsibility for damages caused by a registered land surveyor, even though the provision immediately preceding it (page 2, lines 3-5) requires that surveyor to "obtain proper approval from the appropriate governing authority regarding safety and pavement repair . . ." [emphasis added] By expressly authorizing registered land surveyors to dig "below the road surface of a highway or at the intersection of the center lines of public streets" (page 2, lines 1-2), HB 139 substantially increases the potential for causing serious bodily injury and property damage in circumstances particularly within the responsibility of government. The Legislature will not encourage governing authorities to properly approve such digging and properly prescribe safety and repair measures if it immunizes those governing authorities which fail to do so.

2. Not even legitimate interests in relaxing procedures for hand digging shallow survey monuments justify the provisions of HB 139 which completely immunize governing authorities, public utilities, municipal corporations and other persons (page 2, lines 6-9; page 2, lines 11-16) for all damages suffered by registered land surveyors or anyone under their supervision. If a surveyor is injured because a governing authority improperly approved of his hand digging without informing him of special dangers within

• its knowledge, or because a public utility improperly buried its underground cables or pipelines or allowed them to fall into disrepair, then that governing authority or public utility should be responsible for the consequences of its mistake. This Legislature should not permit special constituencies, even registered land surveyors themselves, to barter away the rights of their peers, their assistants, and others.

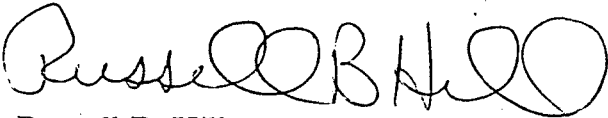
3. By immunizing governing authorities from liability for damages caused by registered land surveyors, HB 139 shifts the entire burden of liability for such damages--and the corresponding increase in liability premiums--onto those surveyors.

4. As originally introduced and posted for hearing, HB 139 contained no language in either its title or body regarding liability for damages. The provisions regarding liability were only inserted after the House Local Government Committee hearing on the bill. Consequently, this hearing before the Senate Business and Industry Committee is the first--and only--opportunity for public hearing on the new liability provisions.

5. The current title of HB 139 refers only to "liability for damages incurred or suffered by land surveyors." However, the new language regarding liability refers not only to damages incurred or suffered by land surveyors but also to damages caused by land surveyors (page 2, line 7). Similarly, the new language regarding liability refers not only to damages incurred or suffered by land surveyors but also to damages incurred or suffered by "any person under the supervision of the registered land surveyor" (page 2, lines 8-9) and "any person under the control of the registered land surveyor" (page 2, lines 15-16). The title of the bill, therefore, fails to give adequate notice of the bill's content to interested citizens.

Thank you for considering these comments. If I can provide additional information or assistance, please contact me.

Respectfully,

A handwritten signature in black ink, appearing to read "Russell B. Hill", with a stylized, cursive script.

Russell B. Hill
Executive Director

DATE March 2, 1993

SENATE COMMITTEE ON Business and Industry

BILLS BEING HEARD TODAY: HB 139 HB 292 HB 300

Name	Representing	Bill No.	Check One	
			Support	Oppose
William Bucher	MARLS	139	X	
Chuck Evilsizer	PSC	292	X	
Char Maharg	DOR	300	X	
Bruce Berrett	MDT	139	X	
GENE PHILLIPS	PP&L	139	X	
" "	"	292	X	
Russell B Hill	Mont Trial Lawyers	HB 139		✓
Gary Willis	M.P.C.	H.B. 139	X	
" "	"	H.B. 292	X	
John Alke	MDY	HB 292	X	
John Alke	MDY	HB 139	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By J.D. Lynch, Chair, on March 4, 1993, at 10:05 a.m.

ROLL CALL

Members Present:

Sen. J.D. Lynch, Chair (D)
Sen. Chris Christiaens, Vice Chair (D)
Sen. John Brenden (R)
Sen. Betty Bruski-Maus (D)
Sen. Delwyn Gage (R)
Sen. Tom Hager (R)
Sen. Ethel Harding (R)
Sen. Ed Kennedy (D)
Sen. Terry Klampe (D)
Sen. Francis Koehnke (D)
Sen. Kenneth Mesaros (R)
Sen. Doc Rea (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Council
Kristie Wolter, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 358, HB 201
Executive Action: HB 304, HB 358, HB 139

HEARING ON HB 358

Opening Statement by Sponsor:

Representative Joe Barnett, House District 76, stated HB 358 constituted a compromise within the banking business.

Proponents' Testimony:

Bill Ruegamer, First Interstate Bank of Commerce, Montana Bankers

raises in Exhibit #4. He stated HB 201 was supported by all of the major banking associations in the state. Representative Hibbard stated HB 201 would update the banking laws which are antiquated.

EXECUTIVE ACTION ON HB 304

Motion/Vote:

Senator Christiaens moved HB 304 BE CONCURRED IN. The motion carried 12 to 1 with Senator Klampe voting NO.

EXECUTIVE ACTION ON HB 139

Motion/Vote:

Senator Kennedy moved HB 139 BE AMENDED (Exhibit #5). The motion carried UNANIMOUSLY.

Motion/Vote:

Senator Mesaros moved HB 139 BE CONCURRED IN AS AMENDED. The motion carried UNANIMOUSLY.

EXECUTIVE ACTION ON HB 222

Discussion:

Senator Bruski-Maus stated HB 222 should be killed in Committee. She stated the Subcommittee decided to hear their constituent's opinions on it. She stated her constituents had given her the impression that licensure was necessary but the price was too high.

Senator Gage stated the Department of Justice felt the fees had to be high in order to finance the inspections.

Senator Brenden stated he concurred with Senator Gage and Senator Bruski-Maus. He added the burden of cost through a licensing fee was necessary, but the licensing fee was too high.

Senator Lynch stated he did not want to foster an anti-business climate. He stated Montana would be the only state in the Union which would make the larger corporations register and pay a \$200 license fee to sell a \$9 fire extinguisher. He stated the fee was too high and seemed impractical. He stated he felt it was incorrect not to charge the large corporations anything at all.

Amendments to House Bill No. 139
Third Reading Copy

Requested by Senator Lynch
For the Committee on Business and Industry

Prepared by Bart Campbell
March 2, 1993

1. Title, line 8.

Following: "INCURRED"

Strike: "OR"

Insert: ", "

Following: "SUFFERED"

Insert: ", OR CAUSED"

Following: "SURVEYORS"

Insert: "OR PERSONS UNDER THE LAND SURVEYORS' CONTROL;
DETERMINING LIABILITY FOR GOVERNING AUTHORITIES FOR DAMAGES
CAUSED OR SUFFERED BY LAND SURVEYORS OR PERSONS UNDER THE
LAND SURVEYORS' CONTROL; DETERMINING LIABILITY FOR PUBLIC
UTILITIES, MUNICIPAL CORPORATIONS, OR OTHER PERSONS HAVING
THE RIGHT TO BURY UNDERGROUND FACILITIES FOR DAMAGES
SUFFERED BY LAND SURVEYORS' OR PERSONS UNDER THE LAND
SURVEYORS' CONTROL"

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 5

DATE 3/4/93

BILL NO. HB 139

ROLL CALL

SENATE COMMITTEE Business & Industry DATE 3/4/92

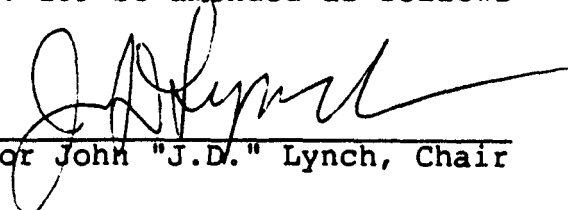
NAME	PRESENT	ABSENT	EXCUSED
Senator Lynch	✓		
Senator Christaens	✓		
Senator Bruski-Maus	✓		
Senator Gage	✓		
Senator Hager	✓		
Senator Harding	✓		
Senator Kennedy	✓		
Senator Klampe	✓		
Senator Koehnke	✓		
Senator Mesaros	✓		
Senator Rea	✓		
Senator Foerts Brenden	✓		
Senator Wilson	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 4, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 139 (first reading copy -- blue), respectfully report that House Bill No. 139 be amended as follows and as so amended be concurred in.

Signed: 
Senator John "J.D." Lynch, Chair

That such amendments read:

1. Title, line 8.

Following: "INCURRED"

Strike: "OR"

Insert: ", "

Following: "SUFFERED"

Insert: ", OR CAUSED"

Following: "SURVEYORS"

Insert: "OR PERSONS UNDER THE LAND SURVEYORS' CONTROL;

DETERMINING LIABILITY FOR GOVERNING AUTHORITIES FOR DAMAGES CAUSED OR SUFFERED BY LAND SURVEYORS OR PERSONS UNDER THE LAND SURVEYORS' CONTROL; DETERMINING LIABILITY FOR PUBLIC UTILITIES, MUNICIPAL CORPORATIONS, OR OTHER PERSONS HAVING THE RIGHT TO BURY UNDERGROUND FACILITIES FOR DAMAGES SUFFERED BY LAND SURVEYORS' OR PERSONS UNDER THE LAND SURVEYORS' CONTROL"

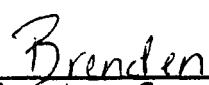
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SENATE

HB 139

491158SC.San

 Amd. Coord.
Sec. of Senate


Senator Carrying Bill

33

HOUSE BILL NO. 139
INTRODUCED BY GRINDE

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING LAND SURVEYORS WHO ARE HAND DIGGING FOR CERTAIN PURPOSES FROM THE PROVISION REQUIRING EXCAVATORS TO OBTAIN INFORMATION ON THE LOCATION OF UTILITIES; DETERMINING LIABILITY FOR DAMAGES INCURRED OR, SUFFERED, OR CAUSED BY LAND SURVEYORS OR PERSONS UNDER THE LAND SURVEYORS' CONTROL; DETERMINING LIABILITY FOR GOVERNING AUTHORITIES FOR DAMAGES CAUSED OR SUFFERED BY LAND SURVEYORS OR PERSONS UNDER THE LAND SURVEYORS' CONTROL; DETERMINING LIABILITY FOR PUBLIC UTILITIES, MUNICIPAL CORPORATIONS, OR OTHER PERSONS HAVING THE RIGHT TO BURY UNDERGROUND FACILITIES FOR DAMAGES SUFFERED BY LAND SURVEYORS' OR PERSONS UNDER THE LAND SURVEYORS' CONTROL; AND AMENDING SECTION 69-4-502, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-4-502, MCA, is amended to read:

"69-4-502. Information to be sought before excavation -- notification -- exception exceptions. (1) (a) No Except as provided in subsection (1)(b), a person shall may not make or begin any excavation in any a public street, alley, right-of-way dedicated to the public use, or utility easement without first obtaining information concerning the

possible location of any underground facility from each and every public utility, municipal corporation, or other person having the right to bury such underground facilities within the public street, alley, right-of-way, or utility easement.

(b) A registered land surveyor or a person under the supervision of a registered land surveyor may hand dig for shallow survey monuments at a depth of 12 inches or less below the road surface of a highway or at the intersection of the center lines of public streets. The registered land surveyor, prior to hand digging, shall give OBTAIN proper notification-to APPROVAL FROM the appropriate governing authority regarding safety and pavement repair and, when appropriate, shall reference the monument upon exposure. THE GOVERNING AUTHORITY IS NOT LIABLE FOR ANY DAMAGES CAUSED OR SUFFERED BY THE REGISTERED LAND SURVEYOR OR ANY PERSON UNDER THE SUPERVISION OF THE REGISTERED LAND SURVEYOR. The registered land surveyor is liable for damages incurred regarding utility destruction, AND ANY PUBLIC UTILITY, MUNICIPAL CORPORATION, OR OTHER PERSON HAVING THE RIGHT TO BURY UNDERGROUND FACILITIES WITHIN THE PUBLIC STREET, ALLEY, RIGHT-OF-WAY, OR UTILITY EASEMENT IS NOT LIABLE FOR ANY DAMAGES SUFFERED BY THE REGISTERED LAND SURVEYOR OR ANY PERSON UNDER THE CONTROL OF THE REGISTERED LAND SURVEYOR.

(2) Every public utility, municipal corporation, or other person having the right to bury underground facilities

1 shall file with the county clerk and recorder in each county
2 where the underground facilities are located, the name,
3 address, and telephone number of the person or persons from
4 whom the necessary information may be obtained unless a
5 one-call notification center is available.

6 (3) (a) A public utility, municipal corporation,
7 underground facility owner, or person having the right to
8 bury underground facilities must be a member of a one-call
9 notification center covering the service area in which the
10 entity or person has underground facilities.

11 (b) Subsection (3)(a) does not apply to an owner or
12 occupant of real property where underground facilities are
13 buried if the facilities are used solely to furnish services
14 or commodities to that property and no part of the
15 facilities are located in a public street, alley, or
16 right-of-way dedicated to the public use."

-End-